

REMARKS

Claims 1-20 are present in the instant application. In the most recent Office Action, claims 1-7, 10-13 and 15-19 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 2,709,317 to Pease, Sr. (hereinafter, "Pease"). Claims 8, 9 and 11 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over Pease alone. Claims 12, 13 and 15 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over Pease in view of U.S. Patent No. 5,651,209 to Rainey (hereinafter, "Rainey"). Claim 14 is rejected under 35 U.S.C. § 103(a) as allegedly obvious over Pease in view of U.S. Patent No. 4,254,093 to Faria, et al. (hereinafter, "Faria"). The Office Action also objects to alleged improper use of a trade name, "Portland cement".

At the Outset, Applicant gratefully acknowledges the courtesy of Examiner Griles in granting a telephone interview in this case, that interview held Wednesday, 21 July 2004 with Applicant's undersigned representative. The following paragraph is a brief summary of that interview.

Applicant's Representative pointed out that the anchoring means cited in Pease is neither the same structure, nor performs that same function as that recited in the claim, therefore, it does not anticipate that element. Further, the sealing and unsealing means cited in Pease does not seal an open upper surface as recited in the claims. Although the Examiner may be at liberty to invert the figure and consider the base a top, this view would destroy the reference as applied to other elements of the claim. Specifically, the anchoring means cited would not be disposed at a base of the containment member in an inverted configuration. Further, the Office Action cites that the body of Pease may be made of metal, comprising a weighting material disposed at a base (recited in claim 2). However, if the entire body is made of metal, the metal would not be disposed at the

base, but distributed over the entire body. Examiner requested an amendment to more clearly define the anchoring means, and indicated that the weighting material and sealing and unsealing means as recited in the claims distinguished over Pease.

By the above amendment, new claim 20 recites a chum delivery container comprising, *inter alia*, a lowering means operatively connected to an anchoring means for anchoring a lowering means to a containment member, the anchoring means disposed at said base within said open interior chamber. No new matter has been added by this amendment. In contrast to the recited claim, Pease teaches that a lower cap (C) has spring fingers (15) that abut the inside of body (16). (Col. 2, lines 16-18). As taught by Pease the spring fingers do not anchor the lowering means to the containment member. Therefore, claim 20 will be seen as distinguished over the reference.

At least claims 1 and 2 will be seen as distinguished over the reference for at least the reasons made clear in the interview summary, above. Further, claims 3-19 each depend, either directly or indirectly, from independent claim 1. These claims are each separately patentable, but are submitted as patentable for at least the same reasons as their underlying base claim. Rejection of claims 8, 9, 11-15 under § 103(a) are each predicated on the reading of Pease with respect to at least claim 1, which has already been obviated. Neither Rainey nor Faria offer any teaching or suggestion to ameliorate the deficiencies of Pease with respect to the underlying claim 1. Therefore, Applicant respectfully submits that all rejections have been obviated, and kindly requests favorable reconsideration and withdrawal.

Regarding the specification objection, Applicant respectfully submits that the term "Portland cement" is generic, particularly in light of the specific trade name ("TOP'N BOND") also mentioned at para. [0026] of the specification (p. 10). For example, "Portland cement" is

listed in the USPTO Acceptable Identification of Goods and Services Manual. Moreover, the General Register lists several trademarks including the term "Portland cement" which are assigned to separate entities, and which disclaim the words "Portland cement" (see, e.g., Reg. Nos. 687,052, 792,073). Therefore, Applicant respectfully submits that the recitation of Portland cement in the generic is not in error, and kindly requests that the objection be withdrawn.

In the interest of brevity, Applicant has addressed only so much of the rejection(s) as is considered necessary to demonstrate the patentability of the claim(s). Applicant's failure to address any part of the rejection should not be construed as acquiescence in the propriety of such portions not addressed. Applicant maintains that the claims are patentable for reasons other than these specifically discussed, *supra*.

In light of the foregoing, Applicant respectfully submits that all claims recited patentable subject matter, and kindly requests an early and favorable indication of allowability on all claims. If the Examiner has any reservation in allowing the claims, and believes that a telephone interview would advance prosecution, she is kindly requested to telephone the undersigned at an earliest convenience.

Respectfully submitted,



David J. Torrente
Registration No.: 49,099

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, NY 11530
Telephone: (516) 742-4343
DJT:ng